

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 4253 of 2024****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE M. R. MENGDEY SD/-**

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Approved for Reporting	Yes	No
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ADITYA AJAYKUMAR CHOKSI

Versus

HONOURABLE HIGH COURT OF GUJARAT

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Appearance:

ADITYA A CHOKSI(7835) for the Applicant(s) No. 1

PARTY IN PERSON(5000) for the Applicant(s) No. 1

LAW OFFICER BRANCH(420) for the Respondent(s) No. 1

MR DM DEVNANI(5880) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE M. R. MENGDEY**Date : 30/04/2026****JUDGMENT**

1. By filing the present petition under Article 226 of the Constitution of India, the petitioner herein has prayed for the following reliefs: -

“A. MAY BE PLEASED TO HOLD and DECLARE that procedure and practice of NOT placing the Successive Bail filed under the nomenclature of Criminal Appeal, Criminal Revision Application or Writ Petition before the same Honourable Court/Bench/Coram is contrary to the law laid down by the Hon'ble Supreme Court of India in the case of Shahzad Hasan Khan v. Ishtiaq Hasan Khan & Anr. reported as (1987) 2 SCC 684 and the full bench decision of this Hon'ble High Court passed in the case of Babubhal Bachubhai Bhabhor v. State Of

Gujarat reported as 2004 SCC ONLINE GUJ 125 as well as de hors to the Circular dated 8.4.2002.

B. MAY BE PLEASED TO HOLD AND DECLARE that Subsequent or Successive (a) Criminal Appeal/s filed U/S 14A(2) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989, (b) Criminal Revision Application filed U/S 102 of the Juvenile Justice (Care and Protection of Children) Act 2015 (c) Criminal Appeal filed U/S 21(4) of the National Investigation Agency Act 2008 against an order of the Special Court or the Exclusive Special Court granting or refusing Bail shall be placed before the same Honourable Court / Bench / Coram which decided the earlier Bail and disposed of as withdrawn/rejected.

ALTERNATIVELY

AA MAY BE PLEASED TO pass any such other order/s or direction/s as this Hon'ble Court deems fit and appropriate in aforesaid peculiar circumstances of the facts and law including but not limited to MODIFYING the Instruction No. Judicial/09/2019 dated 25.4.2019 suitably in accordance with law of the Land.”

2. The petitioner in person herein is a practicing advocate and has filed the present petition being aggrieved by the instructions bearing No.Judicial/09/2019 dated 25.04.2019 whereby the then Hon'ble The Acting Chief Justice had directed that criminal appeals filed under Section 14(A) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against an order of the Special Court or the exclusive Special Court granting or refusing bail, shall be placed before the Hon'ble Court as per the roster irrespective of the fact that earlier criminal appeals or criminal misc. applications filed prior to instruction No.Judicial/05/2018 dated 19.06.2018 came to be disposed of as withdrawn/rejected as the case may be by another Bench. The petitioner in person submitted that the Hon'ble Apex Court in its judgments in cases of **Shahzad Hasan Khan vs Ishtiaq Hasan Khan & Anr** reported in **AIR 1987 SC 1613** and **Harjeet Singh @ Seeta vs. State of Punjab and Anr.** reported in **AIR 2022 SC 281**, has directed that the subsequent bail applications to be listed before the same Judge who decided the

earlier bail applications. Pursuant to those judgments, the respondent herein had issued a Circular dated 08.04.2002 whereby it was instructed to list the subsequent bail applications by the same accused before the same Judge who decided the bail applications earlier. He further submitted that same analogy would apply to the appeals filed under Section 14A (2) of the Atrocities Act as though the nomenclature being criminal appeals, essentially those appeals are essentially applications for bail only. He further submitted that the fundamental principles with regard to bail carved out in several decisions of the Hon'ble Apex Court would apply with equal force to the appeals under Section 14A (2) of the Atrocities Act. Therefore, the appeals under Section 14A (2) of the Atrocities Act, the revision application under the Juvenile Justice Act and the appeals arising out of proceedings for trial under the National Investigation Agency Act, require no different treatment than the bail applications. On the contrary, giving different treatment to such appeals would amount to discrimination on the basis of nomenclature which is impermissible under the law. He further submitted that listing the appeals under Section 14A (2) of the Atrocities Act before a different Bench than the Bench which had decided the earlier appeal amounts to unequal treatment which may result in miscarriage of justice. He further submitted that the Coordinate Bench of this Court has taken the view that the bail applications arising out of an offence registered under the provisions of POCSO and Prevention of Atrocities Act jointly, is to be treated as an application for bail under Section 482 or Section 483 of the BNSS, 2023 (Sections 438 and 439 of the Cr.P.C.). Therefore, when the application for bail involving the provisions of POCSO and Prevention of Atrocities Act, is to be treated as a bail application before this Court, the successive bail application would be placed before the same Bench, which had decided the earlier application. Whereas the successive appeal under Section 14A (2) of the Prevention of Atrocities Act, will be placed before another Bench which would amount to discrimination. He further submitted that the instruction issued by

the then Hon'ble Acting Chief Justice referred to hereinabove, is contrary to the law laid down by the Hon'ble Apex Court in the judgment of **Shahzad Hasan Khan (Supra)**. He, therefore, submitted to allow the present petition and to quash and set aside the instructions dated 25.04.2019 and further direct the respondent herein listing of successive criminal appeals filed under Section 14A (2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, criminal revision applications filed under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and criminal appeals filed under Section 21(4) of the National Investigation Agency Act, 2008 against the orders of Special Court or the exclusive Special Court granting or refusing bail to be placed before the same Bench which decided the earlier proceedings.

3. Learned Advocate appearing for the respondent has taken this Court through the affidavit-in-reply filed by the respondent and submitted that the instructions dated 25.04.2019 were issued by the then Hon'ble Acting Chief Justice after careful consideration and due deliberation. He submitted that the bail applications under Section 439 of the Cr.P.C. (Section 483 of the BNSS, 2023) and the appeals filed under Section 14A (2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, cannot be treated at par as the parameters for consideration of both the proceedings are different. He, therefore, submitted to dismiss the present petition.

4. Heard learned Advocates for the parties. The issue raised by the petitioner in the present petition, is no longer res integra. The Hon'ble Apex Court, in its recent judgment in case of **Shekhar Prasad Mahto @ Shekhar Kushwaha v. The Registrar General Jharkhand High Courts & Another** reported in **2025 SCC OnLine SC 2280** happened to consider a similar issue. The Hon'ble Apex Court in this judgment has clarified its earlier judgment in

case of **Rajpal Versus State of Rajasthan** reported in **2023 SCC OnLine SC 1714**. The observations of the Hon'ble Apex Court are as under: -

“4. The three judges- Bench of this Court in SLP(Crl) No.7203 of 2023 has observed thus:

“7. We have come across various matters from the High Court of Allahabad, wherein matters arising out of the same FIR are placed before different judges. This leads to anomalous situation. Inasmuch as some of the learned Judges grant bail and some other Judges refuse to grant bail, even when the role attributed to the applicants is almost similar.”

5. The said observations have been reiterated by a two-Judge Bench of this Court in SLP(Crl.) No.15585 of 2023 titled as “**Rajpal vs. State of Rajasthan**”.

6. What this Court meant in passing the order dated 31.07.2023 was that when the bail matters are assigned to different Benches and when those bail applications arise out of the same FIR and if such applications are heard by different Benches, it leads to an anomalous situation, inasmuch as some of the benches grant bail whereas some of them take a different view.

7. However, it is to be noted that in many High Courts, the roster system is followed.

8. After a particular period, the assignment of the learned Judges changes. It is also quite possible that the learned Single Judge, who was earlier taking up the assignment of bail matters may in the subsequent roster be a part of the Division Bench.

9. We are, therefore, of the view that if the aforesaid directions is followed universally, it may lead to disruption of benches inasmuch as the learned judge who had initially heard the bail application of one of the accused, may have become a part of some Division Bench when a bail applications arising out of the same FIR is filed by another accused.

10. We, therefore, clarify that if in a particular High Court, the bail applications are assigned to different single Judge/Bench, in that event, all the applications arising out of same FIR should be placed before one learned Judge.

11. This would ensure that there is a consistency in the views taken by the learned judge in different bail applications arising out of the same FIR.

12. However, if on account of change of the roster, the learned judge who was earlier dealing with the bail matters is not taking up the bail matters, the aforesaid directions would not be applicable.”

5. The aforesaid observations of the Hon’ble Apex Court, answer all the contentions raised in the present petition by the petitioner, and therefore, no further discussion as regards the contentions raised in the petition is required.

6. Moreover, as per the settled principle of law, the Hon’ble Chief Justice is the master of roster and the decisions of the Hon’ble Chief Justice as regards the listing of matters is final. The decisions of the Hon’ble Chief Justice with regard to listing of matters should not be the subject matter of legal scrutiny. Therefore, the present petition being devoid of any merits, is hereby dismissed.

SD/-
(M. R. MENGDEY,J)

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